



香港中文大學  
The Chinese University of Hong Kong

Centre for Financial Regulation and Economic Development

金融規管與經濟發展研究中心



FACULTY OF LAW

**A CFRED Seminar:**

## **THE PUBLIC INTEREST AND ISSUES OF FAIRNESS IN THE REGULATION OF FINANCIAL MARKETS**

by

**Dr. Michelle Welsh**

*Monash University*

**10 December 2013, Tuesday, 12:00n.n – 1:30p.m.**

*Faculty of Law Boardroom, 6/F Lee Shau Kee Building, The Chinese University of Hong Kong, Shatin, N.T.*

---

Much of the debate surrounding fairness in financial markets centres on the appropriateness and substance of market rules designed to achieve a level playing field. By contrast, this paper considers issues of fairness in the context of the enforcement of those market rules by public regulators. Where a contravention of the rules that govern financial markets occurs in jurisdictions where a regulator is empowered to take enforcement action, the regulator must exercise its discretion in determining which enforcement action, if any, will be pursued. The regulator's determination may impact on a number of interested parties including investors who have suffered a loss as a result of the contravention in question, and the public. A conflict of interest will arise in situations where regulators are not able to take enforcement action that will protect the interests of both the public and the victims, specifically where the regulator is unable to seek both compensation orders and orders designed to send a deterrent message to the market. The paper makes the case that in situations where the interests of investors and the public conflict, the regulator should place the public interest above the interests of the investors. Considerations of issues of fairness to current investors should not usurp the role of the regulator, which, among other things, is to utilize its enforcement powers strategically, in order to deter future contraventions of the rules governing financial markets.

*(This paper was published earlier this year - Michelle Welsh, 'Considerations of Fairness and Conflicts of Interest in the Regulation of Financial Markets' in Dr Janis P Sarra (ed) An Exploration in Fairness: Interdisciplinary Inquiries in Law, Science and the Humanities (2013) Carswell (Thomson Reuters), Toronto, Canada, 213 – 228.)*

---

***All are welcome!***

**Please join us by registering your interest here:**

**[http://nems.law.cuhk.edu.hk/online-registration/?event\\_id=445](http://nems.law.cuhk.edu.hk/online-registration/?event_id=445)**

**by 9 December 2013.**

## About the Speaker



### **Dr. Michelle Welsh**

Michelle Welsh is the director of the Workplace and Corporate Law Research Group in the Department of Business Law and Taxation. Michelle undertakes research and supervision in the area of corporate law, corporate regulation, enforcement and compliance.

Michelle has published her research in a number of international journals and the leading Australian corporate law journals. Michelle's PhD thesis, concerning Civil Penalties under the Corporations Act was awarded the Melbourne University Law Faculty prize for the top PhD thesis in 2009. Together with three co-investigators Michelle has recently been awarded an Australia Research Council grant of AUD \$403,000 to investigate the regulation of fraudulent phoenix activity in Australia.

Michelle has been invited to present her research at national and international workshops and conferences including the Hartnell Colloquium at the ANU in 2011 and the Fairness in Financial Services Workshop at UBC in Vancouver in 2012.

She has presented seminars by invitation at the Australian Securities and Investments Commission, the University of Michigan, the Law Society of Hong Kong, the Hong Kong Institute of Chartered Secretaries and the Hong Kong Securities and Futures Commission.

